

Defending Debt Collection Lawsuits

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Defending Debt Collection Lawsuits

- I. Collector's Causes of Action
- II. Proof of Assignments
- III. Affirmative Defense: Statute of Limitations
- IV. Counter-Claims



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Collector's Causes of Action

- ◆ Breach of Contract
- ◆ Account Stated
- ◆ Unjust enrichment



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Breach of Contract

Elements:

- A contract existed between plaintiff and defendant
- Defendant breached the contract
- Plaintiff suffered damages



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MCR 2.112(N)

A party whose cause of action is to collect a consumer debt as defined in the Michigan collection practices act (MCL 445.251(a) and (d)) must also include the following information in its complaint:

- (1) the name of the creditor (as defined in MCL 445.251(e) and (f)), and
- (2) the corresponding account number or identification number, or if none is available, information sufficient to identify the alleged debt, and
- (3) the balance due to date.



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MCR 2.113 (C)

(1) If a claim or defense is based on a written instrument, a copy of the instrument or its pertinent parts must be attached to the pleading . . . unless the instrument is

(a) a matter of public record in the county in which the action is commenced and its location in the record is stated in the pleading;

(b) in the possession of the adverse party and the pleading so states;

(c) inaccessible to the pleader and the pleading so states, giving the reason; or

(d) of a nature that attaching the instrument would be unnecessary or impractical and the pleading so states, giving the reason.



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Account Stated

“An account stated ‘is a contract based on assent to an agreed balance, and it is an evidentiary admission by the parties of the facts asserted in the computation and of the promise by the debtor to pay the amount due.’”

Fisher Sand & Gravel Co v Neal A Newbie, Inc,
494 Mich 543, 557; 837 NW2d 244 (2013)



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Account Stated

MCL 600.2145:

“In all actions brought in any of the courts of this state, to recover the amount due on an open account or upon an account stated, if the plaintiff or someone in his behalf makes an affidavit of the amount due, as near as he can estimate the same, over and above all legal counterclaims and annexes thereto a copy of said account, and cause a copy of said affidavit and account to be served upon the defendant, with a copy of the complaint filed in the cause or with the process by which such action is commenced, such affidavit shall be deemed prima facie evidence of such indebtedness, unless the defendant with his answer, by himself or agent, makes an affidavit and serves a copy thereof on the plaintiff or his attorney, denying the same.”



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Unjust Enrichment

Elements of unjust enrichment are “(1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant.”

Sweet Air Inv., Inc. v. Kenney, 275 Mich App. 492, 504, 739 N.2d 656, 663 (2007)



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Proof of Assignments

◆ An assignee of one party's interest must plead and prove the assignment to recover from the other party for contract breach. *CADLE CO. II v. WECHSLER*, 2006 Mich. App. LEXIS 3040 (2006)

◆ Assignments of the right to sue on an account must be in writing.

-- Michigan statute of frauds requires a written, signed agreement for any "assignment of things in action." MCL 566.132(1)(f)



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Statute of limitations

-- Michigan Statute of limitations for breach of contract actions – 6 years – MCL 600.5807(9)

-- Michigan Statute of Limitations for suits on stated account – 6 years

Fisher Sand & Gravel Co v Neal A Sweebe, Inc,
494 Mich 543, 837 NW2d 244 (2013)



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Counterclaims

◆ Fair Debt Collection Practices Act:

▫The plaintiff must be a debt collector:

Must regularly collect debts owed or due to another, be a creditor that uses another name to collect on its debts, or purchase debts in default.

See 15 USC 1692a(6).

▫Debt must be a consumer debt: “primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.”

15 USC 1692a(5)



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Prohibits:

- Threats of Unintended, Unauthorized or Illegal Action
- False or Misleading Representations
- Harassment or Abuse
- Prohibitions on Communications



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Regulation of Collection Practices Act

- ◆ MCL 445.251, *et seq.*
 - State-law version of the FDCPA
 - Violations, generally, MCL 445.252 (19 specific violations):
 - Making inaccurate, misleading, or untrue statements in communications
 - Using a harassing, oppressive or abusive debt collection method.



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QUESTIONS?



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